

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT SEDAM

PRESENT: SRI. SAGAR GURUGOUDA PATIL

B.A., LL.B.  
Senior Civil Judge & JMFC., Sedam

**DATED THIS THE 30<sup>th</sup> DAY OF AUGUST-2023.**

**ORIGINAL SUIT No.40/2022.**

**PLAINTIFF:**

Bhimaraya

(Advocate for plaintiffs by Sri.N.R.)

**//V E R S U S//**

**DEFENDANTS:**

Chinnamma & others

(Advocate for defendant No.4 by Sri.V.J.M)  
(Advocate for defendant No.6 & 7 by Sri.S.R.P.  
(Defendant No.1 to 3 & 5 Exparte)

**ORDER ON No.1**

Leelabai

Applicant/Deft.4

//Versus//

Bhimayya

Opponent/Pltf.

**Order on I.A.No-1 U/o 7 Rule 11(d) of CPC**

The defendant No.4 has filed IA No.1 U/O 7 Rule 11(d) of CPC and sought to reject the plaint as barred by law.

2. The defendant No.4 has sworn to an affidavit in support of IA No.1 and stated that the plaintiff has filed this suit for partition and separate possession. In para 4 of the plaint the

plaintiff has pleaded that there was a oral partition and in the above said partition suit house was allotted to defendant No.1 and suit land was allotted to the plaintiff and her brother Chinnayya. In para No.7 she has further pleaded that she got knowledge of the sale deed dated 9.2.2009 executed in favour of defendant No.4. The same shows that the plaintiff came to know about the sale of the suit house in the year 2009 itself. Since then she did not challenge the sale deed. The plaintiff has filed this suit after almost 30 years from the date of knowledge of the sale deed. Therefore the suit is barred by law and there is no cause of action. Hence prays to reject the plaint.

**3.** The plaintiff has filed objection to IA No.1 and contended that the issue of limitation is mixed question of law and facts and therefore the same cannot be decided at this juncture. Further the suit is well within the time. Hence prays to dismiss the IA.

**4.** On the basis of the above rival contentions and on hearing both sides, the following points arise for my consideration.

- 1) Whether the defendant No.4 has made out grounds to reject the plaint?

2) What order?

5. My findings on the above points are as under:

Point No:1 : In the Negative.

Point No.2: As per final order  
for the following:

### **REASONS**

6. **Point No.1:-** The plaintiff has filed this suit for the relief of partition and separate possession, for declaration that the sale deeds dated 31.7.2002, 23.9.2006 and 20.2.2014 are not binding on the plaintiff.

7. Before touching the merits of the case it is worth to refer the well settled position of law on the point. Here it is worth to note the decision of the Hon'ble Supreme Court in the case of Bhau Ram V/s Janak Singh and others reported in (2012) 8 SC.101, wherein their Lordships held as under:

*“Civil Procedure Code, 1908-Or.7 Rule 11 and Or.9-Rr.8 and 9, Or.23 Rr.1(3) & 1(4)(b)-Rejection of plaint”.*

*Basis for-Only averments in plaint can be looked into while deciding the application for rejection of the plaint- Pleas taken by defendant in written statement not relevant.*

**8.** In the instant case on perusal of the plaint averments it is found that the plaintiff has alleged that there was a oral partition between the plaintiff and his brother on the one part and the defendant No.1 and her mother on the other part. In the oral partition the suit house property was allotted to defendant No1 and the landed property was allotted to the plaintiff and his brother Chinnayya. The plaintiff and his brother pleaded these facts in O.S.No.76/2008 but the Hon'ble Civil Court Sedam did not accept this contention. The plaintiff came to know that the defendant No.1 sold the suit house to defendant No.4 when the defendant No.4 filed written statement in O.S.No.76/2008 on 9.2.2009. Ultimately O.S.No.76/2008 landed property was partitioned. This house property was not subject matter of the said suit since in the oral partition suit house was allotted to the share of defendant No.1 and her mother. But the plea of the plaintiff as to oral partition was not accepted by the court in O.S.No.76/2008. The decree in O.S.No.76/2008 attained finality in RA No.17/2019. Thereafter cause of action arose to file this suit for partition challenging the sale deeds.

**9.** The certified copy of the plaint in O.S.No.76/2008 shows that the said suit was filed for the relief of declaration of

title in respect of land measuring 7 acres 3 guntas in Sy.No.221/1 of Sedam. In that suit the plaintiff herein was defendant No.2. It is not in dispute that the defendant No.1 sold the suit house to defendant No.4 under the registered sale deed of the year 2002-03. It is also not in dispute that the plaintiff came to know about the said sale deed on 9.2.2009 when the defendant No.4 herein had filed written statement in O.S.No.76/2008.

**10.** The defendant No.4 has contended that the suit is barred by the law of limitation. But it is settled law that the issue of limitation cannot be decided at this juncture as it involves mixed question of law and facts. Therefore, without trial at this stage no finding can be given to the issue of limitation.

**11.** Moreover the defendant No.1 sold portion of the suit house to defendant No.4 and not entire suit property. Therefore even if the claim of the plaintiff in respect of the sale deed executed by defendant No.1 in favour of defendant No.4 is barred by the law of limitation then also the suit in respect of remaining portion of the suit house cannot be said to be barred by the law of limitation. Therefore assuming that the claim of the plaintiff against the defendant No.4 is barred by the law of limitation this

plaint cannot be rejected as the plaintiff is claiming share in entire suit house. Moreover this court cannot reject the plaint in part.

**12.** Apart from this the defendant No.1 sold portion of the undivided dwelling house. Therefore whether the defendant No.1 alone was competent to sell the portion of the Hindu Undivided dwelling house and whether the purchaser/defendant No.4 was authorized to come in possession of the portion of Hindu undivided dwelling house has to be decided only after the trial. Thereafter the validity and the binding nature of the sale deed has to be decided by taking into consideration the position of law on the point "alienation of Hindu undivided dwelling house" as provided under the Hindu Law and Transfer of Property Act. Therefore at this stage this court cannot come to the conclusion that the said sale deed is either binding or not on the plaintiff and its validity. All the above aspects have to be decided only after the trial and not at this premature stage. For all these reasons this court is of the opinion that the defendant No.4 has failed to make out the case either U/O 7 Rule 11(d) of CPC. Hence, I answer point No.1 in the Negative.

**13. Point No.2**:- In view of the finding on point No.1, I proceed to pass the following:

**ORDER**

I.A.No.1 U/O 7 Rule 11(d) of CPC  
filed by the defendant No.4 is hereby  
rejected.

(Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me, in the open Court on this the **30<sup>th</sup> day of August-2023**)

(Sagar Gurugouda Patil)  
Senior Civil Judge & JMFC,  
Sedam.